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OFFICE OF PETITIONS

In re Application of :
Helynnne Smith :
Application No. 10/633,782 : ON PETITION
Filed: 4 August, 2003 :
Atty Docket No. SMITH-H :

This is a decision on the "RENEWED PETITION UNDER 37 CFR 1.181,"
filed on 13 November, 2006 (certificate of mailing date 6
November, 2006).

This application became abandoned on 11 June, 2006, for failure
to timely submit a reply to the final Office action mailed on 10
January, 2006, which set a three (3) month shortened statutory
period for reply. A two (2) month extension of time was filed on
13 July, 2006 (certificate of mailing date 7 July, 2006). The
petition filed on 13 July, 2006 was dismissed on 5 October, 2006.
Notice of Abandonment was mailed on 16 October, 2006.

In the present renewed petition, petitioner again requests that
the Office withdraw the holding of abandonment due to non-receipt
of the Office action mailed on 10 January, 2006.

A review of the record indicates no irregularity in the mailing
of the Office communication mailed on 10 January, 2006, and in
the absence of any irregularity in the mailing, there is a strong
presumption that the Office action was properly mailed to the
address of record. This presumption may be overcome by a showing
that the Office action was not in fact received. The showing
required to establish non-receipt of an Office communication must
include a statement from the practitioner, stating that the
practitioner did not receive the Office communication and
attesting to the fact that a search of the file jacket and docket
records indicates that the Office communication was not received.
A copy of the docket record where the non-received Office

communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹ For example, if a three month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action.

Petitioner has provided a statement by the practitioner, Arthur M. Pelsak, stating that counsel reviewed the docket report, but that the docket report indicates that the Office action was not received. A copy of the docket report has been included with and referenced in the practitioner's statement.

The petitioner has made a sufficient showing of nonreceipt of the Office action. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

The application file is being referred to Technology Center 3700 technical support staff for remailing of the Office action mailed on 10 January, 2006. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

¹ M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).